IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of	)	
	)	Art Group: 3679
O'BRIEN, James Richard	)	
	)	Examiner: Garcia, Ernesto
Serial No.: 10/027,203	)	
	)	
Filed: December 26, 2001	)	
	)	
Title: FENCE AND METHOD OF PRODUCING SAME	)	

TRANSMITTAL

Commissioner of Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:

Transmitted herewith is a Declaration Under 37 CFR 1.132 of J. R. O'Brien, the inventor of the invention disclosed and claimed in the subject application. The examiner is respectfully requested to consider the Declaration in conjunction with the Amendment filed June 24, 2004.

Respectfully submitted,

Carl M. Davis II
Reg. No. 31,502

BAKER, DONELSON, BEARMAN CALDWELL & BERKOWITZ
Five Concourse Parkway, Suite 900
Atlanta, Georgia 30328
(678) 406-8700
(678) 406-8701 (fax)
Docket No. 1709331-00001

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Com. of Patents, PO Box 1450, Alexandria, VA 22313-1450 on this 9 day of Sept, 2004.

Signature: _____
Carl M. Davis II

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DECLARATION UNDER 37 CFR 1.132

Commissioner of Patents
PO Box 1470
Alexandria, VA 22313-1470

Sir:

1. My name is J. R. O'Brien, I am the inventor of the invention disclosed and claimed in the above referenced patent application, and I am competent to give this Declaration.

2. My invention provides a picket fence having spaced-apart parallel rails attached to spaced-apart transverse pickets in a picket fence panel that readily racks for tracking a sloped grade of a portion of a terrain surface on which the fence panel is installed.

3. Side-mount picket fence panels experience a problem when the fence panel racks by moving opposing ends of the panel in opposing vertical directions relative to the terrain surface to conform the slope of the rails substantially to the slope of the portion of the terrain surface. Heretofore, side-mount rails roll away from the pickets during racking. This creates an angled gap between the rail and the pickets. The end portion of the rail no longer aligns with end posts to which the rail attaches with screws. My invention however overcomes this problem and provides a picket

fence panel with side-mount rails and pickets that does not experience the roll problem during racking.

4. I have considered *Hinkle* U.S. Patent No. 3,456,921. *Hinkle* shows a second way to connect rails and pickets in picket fence panels. The rails include spaced-apart openings that receive end portions of the pickets. The pickets are tack-welded to the rail. The fence panel in *Hinkle* however does not experience roll-out problems during racking. The only similarity between the fence panel in Hinkle '921 and my invention is that both fence panels have tack welds allowing some flexibility in angled orientation of the fence panel.

5. My invention set forth in the claims presented for examination differ from the structure of the fence panels in *Hinkle* and my invention provides rackability and alignment of the rail without roll problems.

6. I am aware of two competitor companies in the fence panel business, which have copied my development in rackable picket fence panels in order to provide their customers with picket fences that track the slope of the terrain surface over which the fence panels are installed.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both under Section 1001 of Title 18 of the United States Code and that such willful false statements made jeopardize the validity of the application or any patent issued thereon.

July 5, 2004
Date

J. R. O'Brien